

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12830 of 1994

WITH

CIVIL APPLICATION No 2986 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UDAY M PATEL

Versus

BJ MEDICAL COLLEGE & 2

Appearance:

(In SCA)

None present for Petitioner

MR SM MAZGAONKER for Respondent No. 2

MR YF MEHTA for Respondent No.1 & 3

(In CA)

MR SM MAZGAONKER for Applicant

None present for Non Applicant No.1

MR YF MEHTA for Non Applicant No.2 & 3

CORAM : MR.JUSTICE S.K.KESHOTE

ORAL JUDGMENT

#. The Civil Application has been filed by the Gujarat University, and prayer has been made therein for vacation of interim relief granted by this Court on 2.12.94 in Special Civil Application No.12830 of 1994.

#. Papers of Special Civil Application No.12830 of 1994 were called from Registry. I have perused the Specail Civil Application. The petitioner in this Special Civil Application challenges the action of the respondents in declaring that he has passed the III MBBS examination in 1994 at fourth attempt.

#. The dispute pertains to admission of the petitioner to post graduate course in the medical science. The Gujarat University framed admission rules to the post graduate course of medical science and as per the said rules, a candidate who has passed the III MBBS examination in fourth attempt is not eligible for admission to the said course. The petitioner admittedly appeared in the III MBBS examination in the month of May - June 1992 and his result was cancelled vide Notification dated 16th December 1992 as he was found to have involved in unfair practice therein. He was debarred from appearing in one examination under the same Notification. The petitioner failed in June 1993 and he passed the III MBBS examination in November 1993. What the petitioner contended was that in the second attempt he could not appear as he was barred by the University from appearing therein and as such, that attempt should not have been counted as an 'attempt', and if this attempt is not counted while counting the attempts of passing the III MBBS examination, the petitioner has passed the III MBBS examination in third attempt and as such he is eligible for admission to the post graduate course of medical science.

#. The Special Civil Application has come up for admission before this Court on 29.11.94, on which date, this Court has been pleased to issue Notice to the respondents returnable on 2.12.94. On 2.12.94, on behalf of respondents No.1 and 2 nobody put appearance and the counsel has appeared for respondent No.3 only. This Court, after hearing the parties, has issued rule and interim relief in terms that the petitioner's case for admission to post graduate studies in medical discipline shall be considered provisionally on the basis that the petitioner has passed 3rd MBBS in three attempts.

However, it has been ordered that the provisional admission shall be subject to the final result of the petition.

#. The respondent No.2 in the Special Civil Application filed Civil Application before this Court on 20th December 1994. This Civil Application has been listed for admission before this Court on 22.12.94. Thereafter this matter was adjourned to 28.12.94, and I do not find anything on record of this Civil Application that after 28th December 1994, this matter was listed in the Court. Further, I do not find anything on record of the Civil Application that the applicant therein, the Gujarat University has made any attempt to get it listed for urgent hearing. In fact, this Civil Application was not considered to be serious by the applicant-University for all these years. It has come up for admission before this Court today. The learned counsel for the applicant-University is unable to make statement before this Court whether the petitioner has been admitted or not on the basis of merits in the post graduate studies in the medical discipline. The learned counsel for the petitioner in Special Civil Application is also not present. The learned counsel for the petitioner in Special Civil Application and the non applicant in Civil Application is not present which fact goes to show that he is also not interested in this litigation. The absence of learned counsel for the petitioner in the Special Civil Application and non applicants in Civil Application, goes to show that there are two possibilities in the matter. Firstly, the petitioner would not have been given admission in the post graduate studies of medical discipline and secondly, he would have been given admission and in such case, by now, he would have completed his course or he may be at the stage of completion of this course. In the first case, the Special Civil Application has become infructuous as nothing now survives to be decided. In the second case though the admission which would have been given to the petitioner is subject to decision of this Court, but this Court cannot be oblivious of the fact that it is a case of admission of a candidate to the post graduate studies in medical discipline and he would have completed studies by now or he would have been on the verge of completion of his studies. Now the question that arises is whether at this stage, the candidate should be asked to go home where he has undertaken studies for all these years. That is the reason why the Hon'ble Supreme Court, to avoid all such complications in the matters and difficulties of candidates/students, and ultimately the question of their career, has time and again warned that

in the matter of admissions, the Court should not pass the order granting provisional admission. Such matters should be decided finally. However, in this case, the Court has made an attempt to see that the matter is decided at the earliest and at the admission stage itself, but because of non cooperation of the University itself, the Court has to issue Rule and protect the candidate by way of interim relief. The Rule was made returnable on 15th December 1994. It is really shocking that instead of approaching in Special Civil Application and contesting the matter, the University has chosen to file Civil Application on 20th December 1994 before this Court for vacation of interim relief. The University has not prayed before the Court for deciding the matter finally. Worst part of the matter is that the University has not chosen to file reply to the Special Civil Application immediately and till date. So, the University felt contended by filing Civil Application for vacation of interim relief.

#. As stated earlier, there may be possibility that the petitioner in the Special Civil Application would not have been admitted, but second possibility cannot be ruled out. Even if position is taken that the petitioner in the Special Civil Application has been admitted to the course, I do not consider it to be now appropriate to ask him to go home. Whatever may be the reasons and whatever may be the merits of the contentions raised by the Gujarat University in the matter, the fact remains that the student has been given admission by this Court, may be provisional, in the post graduate studies of medical discipline and he would have by now completed the studies or would have been on the verge of completion of studies. The Government also would have spent huge amount in imparting post graduate studies to the petitioner in Special Civil Application. He would have also been paid stipend.

#. Taking into consideration the totality of the facts of the case, now, in my view, in view of the interim relief granted by this Court, nothing more survives in the Special Civil Application and it has become infructuous. In the result, the Special Civil Application is dismissed as having become infructuous. It is hereby made clear that dismissal of this Special Civil Application may not be taken to be denial of admission to the petitioner to the post graduate studies in medical discipline. In case the petitioner has been admitted to the course and he has already completed the course, then it will not be taken that the admission and his degree are illegal. In case he is about to complete

the course, he shall be allowed to complete the same taking it to be a case that the petitioner was eligible for admission to the course. Rule stands discharged subject to aforesaid observations. No order as to costs.

#. In view of dismissal of Special Civil Application and the observations made aforesaid, the Civil Application does not survive and the same is dismissed.

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(sbl)